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Attorneys for Defendant  
Stark Investment Company, a  
California general partnership

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PALMTREE ACQUISITION  
CORPORATION, a Delaware corporation,  
  
Plaintiff,

vs.

MICHAEL R. NEELY, an individual, PERRY  
J. NEELY, an individual; GARY NEELY, an  
individual; MICHAEL R. NEELY, PERRY J.  
NEELY and GARY NEELY dba MIKE'S ONE  
HOUR CLEANERS; CHARLES FREDERICK  
HARTZ dba PAUL'S SPARKLE CLEANERS;  
CHARLES F. HARTZ, an individual;  
MULTIMATIC CORPORATION, a New  
Jersey corporation; WESTERN STATES  
DESIGN, a California corporation;  
MCCORDUCK PROPERTIES LIVERMORE,  
LLC, a Delaware limited liability company  
individually and as the successor to JOHN  
MCCORMICK, KATHLEEN MCCORDUCK,  
PAMELA MCCORDUCK, SANDRA  
MCCORDUCK MARONA, and IMA  
FINANCIAL CORPORATION, a California  
corporation; STARK INVESTMENT  
COMPANY, a California general partnership;  
GRUBB & ELLIS REALTY INCOME TRUST,  
LIQUIDATING TRUST, a California trust; and  
DOES 1-20, inclusive,

Defendants.

Case No. CV 08 3168 EMC

**JOINT CASE MANAGEMENT  
STATEMENT AND [PROPOSED  
ORDER] OF RESPONDING PARTIES**

**Hon. Edward M. Chen**

**Date: September 16, 2009**

**Time: 1:30 p.m.**

**Courtroom: C, 15<sup>th</sup> Floor**

1           The parties to the above captioned action, with the exception of Grubb & Ellis Realty  
2 Income Trust, Liquidating Trust (“Responding Parties”), jointly submit the following Joint Case  
3 Management Statement and request that the Court reschedule this matter for a further Case  
4 Management Conference in six months to allow the parties to continue mediation efforts and add  
5 potential new parties.

6           1.       This action is a “reopener” of a prior action that was conditionally settled. The prior  
7 action was filed on February 3, 1993 in the United States District Court for the Northern District of  
8 California and entitled *Grubb & Ellis Realty Income Trust, Liquidating Trust v. Catellus*  
9 *Development Corp., et al.*, and related cross-actions, Case No. C93-0383 SBA (“Prior Action”).  
10 The Prior Action concerned the alleged release of dry cleaning solvent perchloroethylene (“PCE”)  
11 by dry cleaning establishments in two shopping centers in Livermore, California. The California  
12 Regional Water Quality Control Board (“RWQCB”) had issued an Order to the potentially  
13 responsible parties consisting of dry cleaning operators and property owners to remediate the soil  
14 and groundwater impacted by PCE contamination from the centers. Following settlement of the  
15 Prior Action, certain parties requested, and the RWQCB granted the establishment of a  
16 Containment Zone with a Contingency Plan and the RWQCB issued a new order in 1996 to that  
17 effect.

18           2.       On March 17, 2008, the RWQCB issued a Directive requiring specified parties (the  
19 “1994 PRPs”) to submit a Technical Report to address the contamination outside of the  
20 Containment Zone and ordered further investigation work to define the leading edge of the plume.  
21 On March 21, 2008, the RWQCB issued another Directive requiring the 1994 PRPs to continue  
22 groundwater monitoring and revise the “Contingency Plan.”

23           3.       On February 4, 2009, this Court entered a stipulation (Document 17 in the Court’s  
24 docket) signed by all parties to the action to continue the Initial Case Management Conference to  
25 September 16, 2009 to (1) allow the Responding Parties’ joint environmental consultant to  
26 complete investigative work and technical analysis and to submit an environmental report to the  
27 RWQCB in response to the RWQCB’s Directives; and (2) engage in mediation. The order issued  
28 by the Court on February 4, 2009 also left in effect all provisions of the parties’ Stipulation entered

1 by this Court on September 15, 2008 (Document 13 in the Court's docket) not affected by the  
2 February 4, 2009 order, including the stay on discovery.

3 4. The Responding Parties' joint environmental consultant submitted a Draft Interim  
4 Groundwater Investigation Report to the RWQCB on July 20, 2009. It is expected that the  
5 Responding Parties' consultant will submit additional data and addenda to the RWQCB within the  
6 next month or two to complete the Report.

7 5. On August 18 and 19, 2009, the Responding Parties attended mediation before  
8 Timothy Gallagher, Esq. Also in attendance was counsel for the Grubb & Ellis Realty Income  
9 Trust, Liquidating Trust and three additional entities who may be named in this action. The  
10 Responding Parties believe that substantial progress was and is being made in attempting to  
11 amicably resolve this matter; however, more work is required by all interested parties. The  
12 Responding Parties anticipate participating in further mediation activities over the next 3-6 months,  
13 in an effort to resolve this matter.

14 5. The Responding Parties are continuing to work together jointly through a  
15 coordinating counsel group to supervise the joint environmental consultant. In addition, most of  
16 the Responding Parties are working together to pursue a contribution from additional responsible  
17 parties who participated in the mediation. The Responding Parties anticipate adding these  
18 responsible parties to this action within the next 30-60 days unless the parties agree to a tolling  
19 agreement. The Responding Parties' goal is still to resolve this complex environmental case  
20 through alternative dispute resolution and they have been working diligently to position the matter  
21 for such resolution. In light of the foregoing, the Responding Parties request that the Court  
22 schedule a further Case Management Conference in April 2010 and that in all other respects the  
23 Stipulation entered by the Court on September 15, 2008 remains in effect.

24 DATED: September 9, 2009

GONSALVES & KOZACHENKO

26 By: /s/ Selena P. Ontiveros  
Selena P. Ontiveros

28 Attorneys for Defendant Stark Investment  
Company, a California general partnership

1 DATED: September 9, 2009

The Costa Law Firm

2  
3 By: /s/ Daniel P. Costa  
4 Daniel P. Costa

5 Attorneys for Defendant Stark Investment  
6 Company, a California general partnership

7 DATED: September 9, 2009

Cox, Castle & Nicholson, LLP

8 By: /s/ Peter M. Morrisette  
9 Peter M. Morrisette

10 Attorneys for Plaintiff  
11 Palmtree Acquisition Corporation

12 DATED: September 9, 2009

Wendel, Rosen, Black & Dean, LLP

13  
14 By: /s/ Christine K. Noma  
15 Christine K. Noma

16 Attorneys for Defendants  
17 Michael R. Neely, Perry J. Neely, and  
18 Gary Neely, dba Mike's One Hour Cleaners

19 DATED: September 9, 2009

Dongell Lawrence Finney, LLP

20 By: /s/ Thomas A. Vandenberg  
21 Thomas A. Vandenberg

22 Attorneys for Defendant Multimatic  
23 Corporation

24 DATED: September 9, 2009

Rogers Joseph O'Donnell

25 By: /s/ Robert C. Goodman  
26 Robert C. Goodman

27 Attorneys for Defendant Charles Frederick  
28 Hartz, dba Paul's Sparkle Cleaners

1 DATED: September 9, 2009

Foley McIntosh Frey & Claytor

2  
3 By: /s/ James D. Claytor  
4 James D. Claytor

5 Attorneys for Defendant Western State Design

6 DATED: September 9, 2009

Gordon, Watrous, Ryan, Langley, Bruno &  
Paltenghi

7  
8 By: /s/ Bruce C. Paltenghi  
9 Bruce C. Paltenghi

10 Attorneys for Defendant McCorduck  
11 Properties Livermore, LLC

12 **ORDER**

13  
14 The Case Management Conference scheduled for September 16, 2009 at 1:30 p.m. is  
15 continued to April 7, 2010 at 1:30 p.m. The Stipulation and Order entered by the Court  
16 on September 15, 2008 remains in effect, including the stay on discovery.

17 Dated: September 14, 2009

18 Edward M. Chen  
19 Magistrate Judge of the United States District  
20 Court

